

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Shipman
PL-I
30038

FILE: B-216487

DATE: December 21, 1984

MATTER OF: First Federal Data Services

DIGEST:

A bidder's failure to acknowledge an amendment formally is properly waived as a minor informality when the contracting officer receives the bid with the amendment attached, since acceptance of the bid will bind the firm to the terms of the solicitation, including the amendment, at the bid price.

First Federal Data Services (FFDS) protests award of a contract to either the first or second low bidder under invitation for bids (IFB) No. 6995 issued by the United States Geological Survey, Department of the Interior (Interior), to procure storage facilities for government-owned computer tapes and disks. FFDS contends that the first and second low bids are nonresponsive because the bidders failed to acknowledge receipt of amendment No. 1 to the IFB.

We deny the protest.

At the time the IFB was issued, the Wage Rate Determination, which the contracting officer had requested, had not been received. Consequently, the Wage Rate Determination was listed on the index page of section "J" of the IFB, by number and by the page numbers that it would occupy on receipt. Two pages following the index page of section "J" were each marked with the legend:

"THIS PAGE HAS BEEN LEFT BLANK FOR THE
INSERTION OF WAGE RATE DETERMINATION NO. 79-
219 (REV. 12), WHICH HAS NOT YET BEEN
RECEIVED FROM THE DEPARTMENT OF LABOR. IT
WILL BE FORWARDED IN THE FORM OF AN AMENDMENT
UPON RECEIPT."

Amendment No. 1 transmitted the Wage Rate Determination and provided that bidders must acknowledge receipt either by returning a signed copy of the amendment with the name and address of the offeror in the proper box, by acknowledging receipt on each submitted copy of the bid, or by separate letter or telegram.

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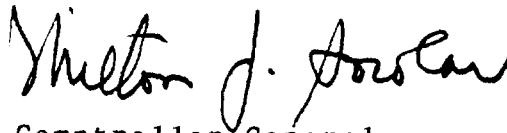
Three timely bids were received. U.S. Safe Deposit Co. (USSD) was the low bidder, Independent Services was second low, and FFDS was the highest bidder. Interior concedes that neither USSD nor Independent acknowledged receipt by any of the above three methods. However, USSD's bid contained the Wage Rate Determination inserted in the proper location--in section "J"--and the bid package was stapled together and signed by the president of USSD, who is identified on the bid as the party authorized to sign. Interior and USSD contend that, therefore, the amendment was constructively acknowledged.

FFDS asserts that the amendment must be acknowledged by one of the three methods specified by the amendment. FFDS also contends that USSD may not be bound by the Wage Rate Determination because there is no evidence as to who inserted the amendment into the bid or whether such person was authorized to do so.

A bidder's failure to acknowledge an amendment formally is properly waived as a minor informality where the bid clearly indicates that the firm received the amendment. Pioneer Fluid Power Co., B-214779, Sept. 4, 1984, 84-2 C.P.D. ¶ 246. Here, it is obvious that USSD received the amendment since the bid as submitted to the contracting officer had the amendment bound into the bid as part of the bid. In such case, USSD's signature on the bid insures that acceptance of the bid will, as a legal matter, obligate the firm to perform in accordance with the terms of the solicitation, including the amendment, at the bid price. Protimex Corp., B-204821, Mar. 16, 1982, 82-1 C.P.D. ¶ 247.

We have been informally advised by Interior that USSD has been determined responsible. Since we have found that the firm's bid was responsive, the acceptability of the second low bid is academic and need not be considered.

The protest is denied.

for 
Comptroller General
of the United States